Personal Bankruptcy Systems in the EU – Measuring Leniency

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Thesis summary

The goal of the work and its background

Since World War II, there has been a massive credit expansion to consumers, also in Europe. With increased credit to consumers comes inevitably increased risk of a negative credit event, in many cases due to change of life events, such as loss of job, sickness, divorce and death of an income earner in a family. This in turn, in Europe, has led to a regulatory wave to introduce personal bankruptcy regimes for consumers, and for entrepreneurs. Academic research on personal bankruptcy has distinguished between firstly discussions on personal bankruptcy regulations in themselves and are usually focused on the controversial impact thereof on society, economy, financial markets, entrepreneurship, and labour supply. Secondly and distinctly, limited research has tried to comparatively analyse personal bankruptcy regimes across jurisdictions, in order to analyse their degree of leniency.

As such, consumer overindebtedness has led to a vast expansion of legislative frameworks for managing consumer bankruptcy – or debt restructuring – across Europe. Taking an example from the US where such regime had been in place for years, the European countries starting with Denmark in 1984 has introduced somewhat similar concepts, but all building on different underlying reasoning and moral assumptions, leading to piecemeal and fragmented approaches across jurisdictions *(Blazy et al. 2013)*. I try to provide an overview of the approaches in the literature and to score the legal frameworks in Europe in order to provide a basis for comparing national laws. Scoring models have already been presented in the literature, but primarily with a limited number of parameters for a limited number of countries. Here 35 parameters are established for measuring the leniency of national laws, and 25 countries in Europe are scored building on *Graziano et al. (2009).* This provides a granular understanding of the European consumer bankruptcy laws and how they relate.

Even if some movement may be tracked and is described in detail in the research carried out during this dissertation coming together, there are layers of moral reasoning still clinging to the European approach. The European Commission acknowledged this already in 2007, just prior to the full financial crisis came into effect, when it assessed that: "*Making a fresh start after bankruptcy can be challenging from a legal standpoint. Still in many countries bankruptcy law treats everyone in the same way irrespective of whether the bankrupt was fraudulent or irresponsible or whether the failure was through no obvious fault of the owner or the manager, i.e. honest and above-board. Also, numerous rules impose restrictions, prohibitions, and* *disqualifications on bankrupts solely on the basis of the existence of bankruptcy proceedings. This automaticity of approach takes no account of the risks that are an everyday fact of business life and implies a belief that the bankrupt is someone in whom society can have no trust or confidence. A radical shift in the rationale of insolvency laws is needed in the EU[1].”*

In one of the main studies of Europe so far, *Armour and Cumming (2008)* looked at 15 European countries' over-indebtedness regulation from the perspective of a fresh start, i.e., the ability of entrepreneurs to have debt wipeout. They used a limited (5) set of variables to analyse differences in the institutional frameworks (legislation). Their findings were prevalently focused on incentivizing entrepreneurialism. The authors found, that controlling for a range of other legal, economic, and social factors that may affect national levels of entrepreneurship, personal bankruptcy law has a pronounced effect on levels of entrepreneurship. They considered that bankruptcy laws have the most statistically and economically significant effect on levels of self-employment across countries, and matter more than economic determinants such as real GDP growth and stock market returns. It is shown that changes in bankruptcy laws that are more entrepreneur-friendly give rise to statistically and economically significant increases in self-employment per population. In relation to the availability of a fresh start, the authors discovered, that going from the littlest generous to uttermost generous jurisdictions (that is, from not permitting a fresh start at all to granting one immediately) is associated with an increase of around 3.9 per cent in the average rate of self-employment (self-employment/population) in the countries in their study for the period of the study. The authors also looked at the links between restrictions on access to limited liability and self-employment. Consistently with their literature review, they found restrictions (as measured by minimum capital requirements) was negatively associated with self-employment, and they found them to interact with the effect of personal bankruptcy laws: By combining stringent bankruptcy law with high requirements for the equity, to be present at the time of the establishment of a company. The authors discovered that the effects of the policy were immediate: by applying leniency as regards access to personal bankruptcy in combination with access to formation of companies with limited liability at an insignificant capital charge (equity requirement) it became an efficient policy instrument for increased activity of entrepreneurs. Yet they recognized outlier countries (in particular, Greece, Italy, and Spain). Their analysis of bankruptcy laws did not explain those outliers.

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1 Brussels, 5.10.2007, COM(2007) 584 final: Overcoming the stigma of business failure – for a second chance policy.

In order to provide further information, on the current regulatory status in the EU, and not least in order to have a scientific basis for cross border comparison of the available laws in the EU, a detailed and granular investigation of existing legal frameworks across EU countries has been undertaken. The findings from the legal frameworks have been scored consistently and in-depth – and subsequently an attempt has been made at independently verify the scoring that has been carried out, in order to ensure robustness and validation of the scoring. This task has been called for explicitly by the OECD in 2016: "*The available data sources suggest that using surveys and publicly available legal sources are useful in getting information on the relevant institutional characteristics. Hence, updating and extending the time and country coverage of the Armour and Cumming (2008) data is desirable, given the importance of personal insolvency regimes for entrepreneurship and productivity, and the fact that there have been changes to it in a number of OECD countries in recent years*" (*McGowan and Andrews 2016, p. 31*). This is exactly part of the undertaking here.

This study challenges the narrative of "leniency" but would rather encourage pursuing an approach building on more economical rational thinking of consumer credit risk allocation from the perspective of the state, as has been the case in the US since 1898 (*Graue 1939*). This is done by a literature review of studies in consumer over-indebtedness and by reviewing and scoring European regulatory frameworks within the area over consumer over-indebtedness. By comparing consumer over-indebtedness regulation in the European Union and scoring the frameworks a basis for cross-country comparison in the EU is provided. The institutional developments in financial services 1) by requiring banks to set specific controls on checking the basis for credit granting to consumers (creditworthiness requirements); 2) to allocate from the outset of the credit process an allocation to absorb credit loss (EL (expected loss) = PD (probability of default) * LGD (loss given default)) - should underscore the progression from morality based legal instrument to a more scientific and databased economic efficiency approach. This development, it is argued, infers a transition from the Roman law historic moral default of returning in whole what has been lent, to a modern approach of construing debt as an economic instrument, where the placement of a loss must be distributed according to what provides an optimal distribution at the level of society, i.e. allocation of consumer credit risk.

The aim of the research is to construct a composite index, which includes the characteristics and elements of EU personal bankruptcy systems in order to compare their leniency and to compare and rank the personal bankruptcy legislative systems of all EU countries from the leniency aspect, in order to analyse the differences and similarities.[2]

I firstly reviewed existing literature on personal bankruptcy, and overindebtedness that leads to the need for personal bankruptcy regulations, and then looked at the question of leniency. Subsequently, I present the EU member states' regulation in the area and the EU fresh start directive[3]. It is demonstrated that the regulation in EU member states is fragmented and diverse.

In order to analyse the regulations of member states, and to compare their development, the question is on what criteria to assess this development. Hence, I will set forth my hypothesis.

The first hypothesis is, that European personal bankruptcy regulations can be grouped based on the main characteristics of their leniency aspects, so as to reflect, perhaps, differing schools of thought thereon. The second hypothesis that comes fast to mind within the law, is that could perhaps be, that grouping of leniency aspects will reflect an association with the law origin of a country. As is well established, Europe can be overarchingly divided between common law and civil law systems, with Scandinavia being a hybrid system of the two. The civil law systems, consisting of the German legal tradition, French legal tradition, and Italian legal tradition, in particular, as countries with large civil code regulations that are ultimately founded on Roman-, or Roman-Germanic law. A third hypothesis that needs researching, is if it is rather the geographic-regional location of a country that might explain the leniency characteristics of personal bankruptcy laws in Europe. As an example, we have the Nordic countries, Baltics, Eastern Europe, etc. Finally, the fourth hypothesis is, that the development of personal bankruptcy laws can be explained by their age from coming into effect in their respective member states' legal system, i.e., a maturation development process.

Summing up, the hypothesis around which this thesis is built is as follows:

[2] This research was supported by the Higher Education Institutional Excellence Program 2020 of the Ministry of Innovation and Technology in the framework of the 'Financial and Public Services' research project (TKP2020-IKA-02) at Corvinus University of Budapest. Furthermore, the first two years of the research was funded by the Association of Danish Mortgage Banks, now merged to become Finance Denmark.

[3] Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 -in this text referred to as the fresh start directive.

1) European personal bankruptcy legislations can be grouped based on their leniency characteristics
2) The leniency level of European personal bankruptcy legislations is associated with the law origin of the country
3) The leniency level of European personal bankruptcy legislations is associated with the regional position of the country
4) The leniency level of European personal bankruptcy legislations is associated with the age of the legislation

The applied method and its justification

Personal bankruptcy regimes are of great variety in the world, including the European countries. In comparative analyses, there is a characterizing opportunity formed on the general approach and whose needs – the debtors or the creditors – are better represented in the process. It is a widely accepted view that the debtors' rights and interests are favoured in the US, where the legislations have been more forgiving than in European countries, where creditor-favourable personal bankruptcy legislations are traditional, at least until the EU Fresh Start directive is implemented in member states. One grouped the countries around the world based on the "availability, certainty, and promptness of debt forgiveness as follows: conservatives have no discharge or fresh starts available, and liberals are those countries where a quick and automatic fresh start is available either via straight bankruptcy or through repayment settlements (*Efrat 2002)*. Ramsey discussed comparative consumer bankruptcy and described the main features of regulation, such as the influence of the US in introducing a fresh start in the legislations of European countries. He explained the differences based on the path-dependence of legal institutions, cultural differences, law origin or political interests, and the influence of different groups in society (*Ramsay 2007)*. *Heuer (2014)* classified consumer bankruptcy regimes into 15 advanced economies of the world. He identified a "common core" of bankruptcies and defined four clusters of models (market, restriction, liability, and mercy model), based on fresh-start opportunities and restrictions.

In an extensive study of the legislations of 30 European countries were presented and compared by country experts based on the same characteristics and dimensions of the systems (access, discharge, processes, competent courts, debtors' and creditor's position, costs, etc) (*Graziano et al. 2019)*. As such, *Graziano et al. (2019)* provide the most recent and very extensive research into comparative personal bankruptcy. The mammoth monograph (1162 p.) in particular uses the comparative-legal model on "länderbericht" developed by *Zweigert and Kötz (1996)*. This approach entails functional comparative analysis, whereby only law, that has the same function, can be compared. This approach has earlier been considered the gold standard for comparative legal research, albeit it is coming more under scrutiny today. Not least in terms of law and economics, and to enable an economic analysis of the function of law, the method of "länderberich" is only useable as e data collection method in terms of providing information on the legal systems at hand, whereas the method does not in itself enable mathematically measurable data[4]. *Graziano et al. (2019)* contain "länderbericthe" written by national, mainly academic, experts from all EU countries and from geographic Europe. The country reports cover a quite full description of national personal bankruptcy systems, including the possibility of pre-process action or negotiations, description of the access to proceedings, and the different types of procedures, payment plan, discharge, and costs. It also covers more procedural aspects in terms of a competent court and their possible assistance from external parties or insolvency office holders and finally describes the rights and obligations of the parties to the process, i.e. the debtor and the creditor. *Graziano et al. (2019)* pointed to development throughout Europe towards access to personal bankruptcy procedures, and that not only for entrepreneurs but also for consumers. Furthermore, they described a trend towards reducing discharge periods, and the 3-year discharge in the EU Fresh Start directive, albeit only binding in regard to entrepreneurs and recommended for consumers, is an indication of the same trend at the EU level *(Graziano et al. 2019, p. 88)*

To bridge the legal information of individual countries and numerical measuring we use the system of composite indicators. By setting indicators, we examine each country's regime in parallel with the comparative research done in this field (*Armour and Cumming 2008); (Graziano et al. 2019).* Composite indicators gained great popularity in research during the last decades, resulting in a large amount of literature describing the methodology and ways of building composite indicators and indices. (*Greco et al. 2019)* gave a complex review of the literature describing the methodological framework of constructing composite indices. For the development of composite indices, *(OECD 2008)* described the methodology as a 10-step process that serves as a checklist.

When comparing the legislation of different countries, we considered the methodology used by *(La Porta et al. 1998)* for similar purposes. These dimensions complement and partly correspond to the categories defined by *White (2007)* and *Armour and Cummings (2008)*

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composite indices, (*OECD 2008)* described the methodology as a 10-step process that serves as a checklist. In comparing the legislation of different countries, we considered the methodology used by (*La Porta et al. 1998)* for similar purposes.

The level of the leniency of a personal bankruptcy system describes how the system handles the defaults of private persons and entrepreneurs with unlimited liabilities, how easy or difficult it is for borrowers to achieve a fresh start, and how stigmatic the life of the borrower is after receiving the fresh start. More lenient systems enable a fresh start more easily, and the stigmas afterwards are less severe; in a less lenient system, a fresh start is either not offered at all or only after a restrictive, long, stigmatic, uncomfortable, expensive, and complex process with additional stigmas.

Leniency is, thus, an aggregative term that can be characterized by *seven main dimensions* of personal bankruptcy legislation (*Walter 2020*):

1) accessibility, i.e. the existence of straight bankruptcy[5];

2) eligibility;

3) costs;

4) complexity;

5) process;

6) conditions for discharge at debt restructuring.

7) stigmas of filing.

These dimensions partly correspond to the categories defined by *White (2007) and Armour and Cummings (2008)*, who evaluated the systems of various chosen countries (England, US, Germany, France, Canada). *White (2007)* contrasted the bankruptcy policies based on the trade-off between providing insurance to debtors against punishing default. *White (2007*) used seven categories for the selection which were as seen: the amount of debt discharged, asset exemptions, income exemptions, a fraction of income above the exemption that debtors must

5 Straight bankruptcy is a process like Chapter 7 in the US Bankruptcy code, where after a relatively rapid liquidation, asset sale process, the debtor receives a discharge at the end.

use to repay, length of the repayment obligations, bankruptcy costs, and bankruptcy punishments. These categories correspond to our dimensions of "process", "conditions of discharge", "costs", and "stigmas", but we completed them with several other dimensions and indicators.

The study breaks down the seven main dimensions into *35 specific indicators*. The seven groups of indicators altogether describe the dimensions and phenomena. Our dimensions and categories also follow the structure of the comparative analysis and country report of 30 European consumer bankruptcy legislations of *Graziano et al. (2019),* who described regimes based on the possible processes, costs, discharge conditions, status of debtors, and creditors, supervision, and officeholders' roles.

By data selection, it examines and analyses the regime of 25 EU countries and the US as a benchmark. Two countries (Bulgaria and Malta) currently have no personal bankruptcy regulations. We create indicators based on questions that are formulated for each subdimension. We obtain the data from complex legislation, which sometimes include different laws and judicial customs. By setting the indicators, we examine each country's regime in parallel with the comparative research done in this field (*Armour and Cumming 2008); (Graziano et al. 2019).*

Legislative solutions in Europe are highly diverse (fragmented). We searched for data that, first, unequivocally characterize the selected phenomenon and, secondly, could be detected in all the legislations. Data and indicators must also be comparable in different countries, and potential answers must be separative, covering all or most of the possible alternatives included in the legislation. Answers based on metric indicators (like the cost of filing, the volume of deposit, length of repayments, number of regimes, or number of years for restrictions, etc.) are typically unambiguous. However, non-metric indicators reflect various potential activities (events, constraints, income types, credit types, benchmarks, types of punishment, etc.), which are listed in different ways for each regime, and where legal concepts are fragmented in their definition or scope across EU jurisdictions. The formulation of these indicators must cover all the main possibilities in different local legislations. In some cases, indicators refer to a phenomenon that can be answered unambiguously (like who drafts the repayment plan first, who bears the cost, whether the pre-action stage exists or not). In a few cases, however, subjective expert opinions need to be obtained regarding the complexity. Missing or doubtful data are completed based on consultations with the country's legal experts.

The data collection is then improved by indicator definitions and data quality parallel to the analysis of laws and by discussing preliminary results with experts from 19 countries. These experts, specialized in their local regime, validated the indicator scores of their countries. The created dimensions and indicators are detailed in Table 1.

Being aware that these indicators might not fully cover the complex phenomenon of each dimension; nevertheless, it is offered that they characterize the phenomena well and can form a basis for distinctions among countries.

Like former studies, it is chosen a categorical scale assigning a score to each indicator (*Armour and Cumming 2008); (Graziano et al. 2019)*. Categories are numerical: zero, one, or two. For the formulation and scoring of the categories, see below in detail. The higher the score, the more lenient the given phenomenon to the borrower. In the case of metric indicators, we determine thresholds based on the frequency and ranking of the data collected from the legislations to obtain the final scores. These thresholds appear based on the length of the payment period, the benchmark of necessary repayment, length of stigma for a new discharge, court fee, and deposit level.

As regards the limitation of our research, it is a cross-sectional analysis and shows the leniency level of the countries based on the regulation valid in these countries in 2020. When new major reforms are implemented, our results and conclusions could change, therefore, continuous monitoring and updates in the scoring and calculations are necessary. Furthermore, our study focuses only on the EU. Some European countries that virtually play an important role in Europe (Great Britain, Switzerland, Norway, or Russia) are not in the scope. Finally, the scoring is sensitive to the interpretation of the wide variety, hardly comparable legislative formulations, the different legal structures, the possible difference between case-law and the verbatim legal text. Therefore, giving scores to a few indicators caused some uncertainty. Most of the scores were validated by local legal experts, however, some indicators were debated. We mitigate most of these open issues by iterating the expert opinions, expanding legal sources, and also by estimating the sensitivity of some categorial scores on the final index scores. We conclude that even if opinions might differ in some cases, they do not alter the final country index scores and the ranking significantly.

Table 1: Leniency dimensions and indicators

Dimensions	Indicators
1. *Straight bankruptcy* (accessibility, existence)	– Straight bankruptcy, as a separate regime, is part of the legislation – Walk-away opportunity
2. *Eligibility*:	– Entitled persons to participate, to file for in the process (natural person, private entrepreneurs, special conditions, limitation due to former procedures) – Preconditions, constraints in wealth, income, collaterals, status to start – Preconditions in debt (the art of debt, minimum, maximum volume) – Stigmas that impede filing
3. *Cost*, *expensiveness* (transaction costs):	– The magnitude of starting administrative costs – Distribution of costs among stakeholders – Deposit requirements
4. *Complexity*	– Variety of types of creditors – Variety of officers who conduct, and variety of regimes – Complexity to start a procedure – Complexity to overview the process for professionals – Availability of a debt counselling service and its conditions
5. *Process*	– Any pre-action stage, amicable settlement incorporated in the process flow – Entitled persons to initiate a procedure (creditor, debtor, or legislation) – The initiator of the first draft of the repayment plan – Creditors included in the process – The degree of disability of the debtor during the process – Decision mechanism during the process (the majority of creditors, court, etc.) – Asset sale – who is entitled to sell the assets, properties – Possible consequences of commencement of the procedure – Exemptions (based on threshold, property and income types, future incomes/properties) – Possible easing measures, decision during the repayment, debt settlement processes – Possible penalties, consequences due to violation of the duties (the debtor)

The indicators are then cumulated at two levels. We use equal weights (EW) with linear aggregation for different numbers of indicators within one dimension; we consider all the selected indicators of a dimension, as it is equally important to characterize each specific dimension. However, it is disputable as to which dimension is more important to characterize the overall leniency. Therefore, we apply a budget allocation process (BAP) with experts and use linear aggregation to calculate the composite index from seven main dimensions. The prerequisites of applying the method referred to in the literature – less than 10 dimensions and a diversified expert panel of more than 10 members – are met (*Greco et al. 2019); (Zhou et al.2012)*. We select a panel of 16 experts (insolvency lawyers, academic experts) from 15 different EU countries.

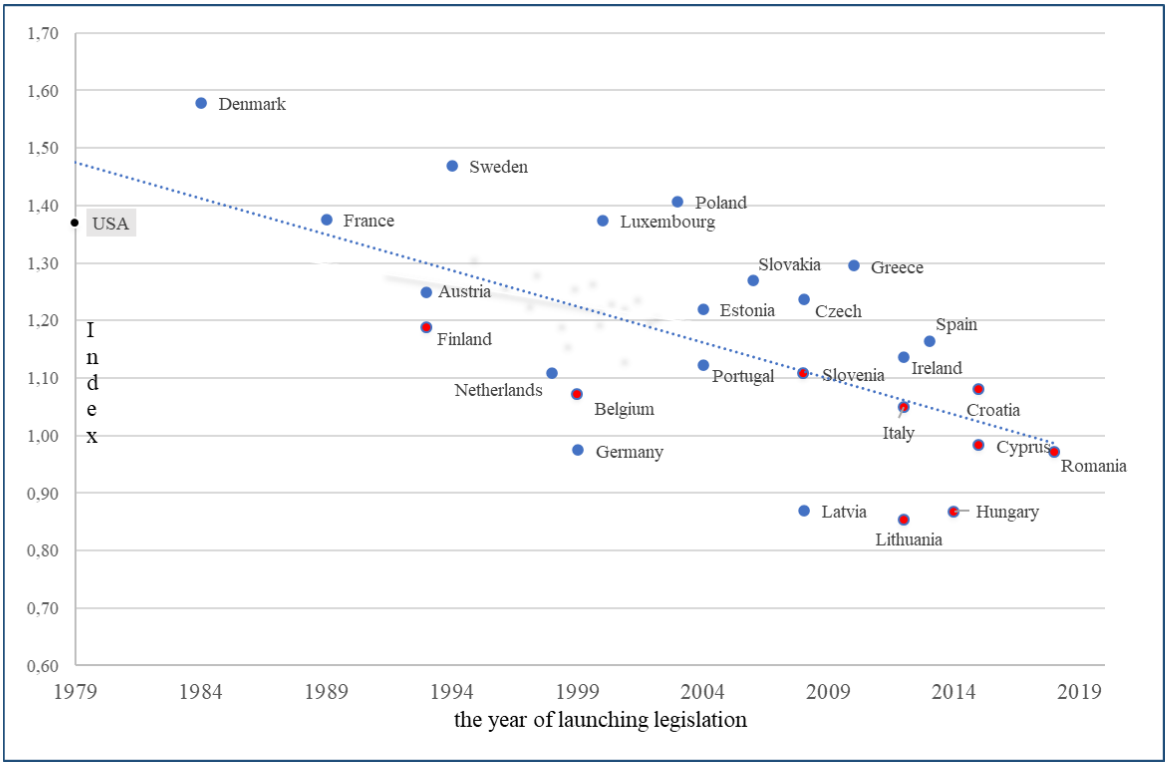
We ask about their judgments of the relative importance of the respective indicator groups (dimensions). Finally, we calculate the average of the weights given by the experts. These average weights of the main dimensions are used for the calculation of the final composite indices for all the countries.

The main scientific findings and results of the dissertation

The result is a calculation of the composite index for 25 EU countries and the US as a benchmark, validated results, and a ranking of the countries according to the leniency of their personal bankruptcy systems. The analysis is revolving around four hypothesised explanatory factors by analysing the index scores by grouping based on leniency characteristics, region, law origin, and the age of the regime.

It is concluded that the systems show high heterogeneity and cannot be clustered by leniency characteristics, region or legal origin assumed based on former studies. Hence, hypotheses 1, 2 and 3 are respectively rejected.

However, there is a strong association between leniency and the age of legislation.



Results indicate that personal bankruptcy policies in the EU are usually launched as creditor-friendly and are later shifted to a more lenient direction. The more lenient regulatory frameworks seem in sync with suggestions of looking at personal bankruptcy from the perspective of economic efficiency as suggested by most recently Jan-Ocko Heyer in *(Graciano et al. 2019, paragraph 1.15)*. The research underpins the more modern regulatory regime adopted by the EU in terms of the Fresh Start Directive that is currently being rolled out in member states. But I criticize the EU initiative for being insufficient as far as it is only obligatory for an entrepreneurial fresh start, and hence insufficient as it only recommends extending the framework to consumers. The research also points to the need to keep revising national regulatory frameworks to account for the maturation of the personal bankruptcy process, in terms of making them more lenient, as seems to be the experience across Europe.

Finally, the research underscores the need for further research in the area.

Using the term lenience carries with it the underlying narrative, that by reducing the debt of the borrower, by an act of grace by society, leniency has been granted to the debtor. This again relies on moral assumptions of what has been lent must be returned as a whole. As credit has arisen as a dedicated branch of business, so has regulation of the credit assessment that has to be undertaken. Furthermore, as examples of over-indebtedness have increased in many jurisdictions, so has the need to regulate against excessive lending in addition to the remedy of the borrower of debt restructuring, including eliminating the debt in part or in whole. As such one could argue, that in more modern terms perhaps it is not a question of the grace to be granted an individual in terms of leniency but rather a question of distribution of risk, namely the risk of insolvency (over-indebtedness) of the consumer debtor.

There is an inherent trade-off between 1) on the one hand the obvious risk of the consumer providing insufficient information prior to contracting the debt, and for the consumer debtor to behave opportunistically to minimize their repayment; 2) and on the other hand the financial institution creditor having advanced modelling and processing capabilities enabling them to set requirements for credit granting respectively controlling the issued credit, to absorb losses from substandard credits issued and to also behave opportunistically by extracting the maximum return from debtors irrespective of its impact on society. From the perspective of society, the balance must be found on this issue to encourage lending to increase economic activity through maturity transformation on the one hand, and on the other hand ensuring the maximization of productivity in the economy by entrepreneurs, inventors, and not least the workforce at large. Insufficiently calibrated credit risk frameworks encompassing all components from credit assessment requirements (including consumer information provision) over credit loss absorption requirements to consumer over-indebtedness regimes carries with it the risk of systemic banking defaults, excessive lending or insufficient innovation/entrepreneurialism but also, and perhaps not least, to stimulate the shadow economy by disincentivizing overindebted debtors with insufficient tools for reducing over-indebtedness to take part in the regular economy. As for the latter component, if over-indebtedness regulations are not sufficiently granular in distributing the credit risk between the credit and the consumer debtor, the latter might be incentives to go into the shadow economy if that is the most economically viable (rational in that person's sense) in a situation. At the systemic level, such a level of creditor protection leads to an outcome that is inefficient from a tax and state perspective. As little as it may be from a perspective of novelty, the humble suggestion of this study is to modernize the narrative and labelling of consumer over-indebtedness from "leniency" to the plain technical consumer credit-risk allocation. The flip side of leniency is oppressive. What is suggested here is balancing for a socially efficient outcome.

The observations relating to the utilization of the dissertation

A large part of the literature on personal bankruptcy focused on the effects of fresh start and level of leniency on the society, financial markets, entrepreneurship, and labour supply, which were obtained through comparative analyses in time or across countries. However, measuring leniency in these papers was limited to one-time legislative changes or a few characteristics such as homestead exemptions. In contrast, we create a compact measure of the leniency of very different personal bankruptcy regimes based on seven main dimensions and 35 categories. The dimensions prove to be independent and, after aggregation, could be used to rank countries, identify differences, set a basis for analysing the differences across countries, and measure changes in the legislation.

In Europe, the EU has started regulating the area of personal bankruptcy, with the implementation of the Fresh Start directive[6] to be completed in 2021 at the latest, but realistically perhaps during 2022. The outcome of the dissertation points in the same direction as some of the novelties of the directive will mean for a number of member states when they implement it.

Even if the scope of the fresh start directive is limited to *only* entrepreneurs who are natural persons (and, in addition of course, companies)[7], it is noteworthy that the directive itself encourages member states to voluntarily extend the application of the rules on the discharge of debt to consumer overindebtedness in general[8]. This will extend the use of discharge to all jurisdictions across Europe and supports the assessment that as legal frameworks mature and gain experience, they seem to become more lenient. It should be noted that the private debts of

6 EU Directive 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt

7 Art. 1, subsection 2, litra h) of EU Directive 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency, and discharge of debt.

8 Recital 21 of EU Directive 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

entrepreneurs take part in their debt cancellation under the fresh start directive, as a starting point (art. 24).

Furthermore, if restructuring is not an option, the fresh directive makes it clear that entrepreneurs should have access to a straight bankruptcy option, which we too have considered the gold standard, even if has so far rarely been available in EU member states. As such, art. 20 sets forth, that member states shall ensure, that entrepreneurs have access to at least one route, that leads to full discharge of their debts, and that the full discharge should happen at the latest three years from the insolvency proceeding started (art. 21). This too will lead to increasing leniency in the regulatory frameworks of EU countries, and the 3-year discharge period is in line with what has been considered the gold standard timing-wise when scoring during this research.

Our overall results open the gate to new research areas. With the composite index, the leniency of other countries outside Europe can also be measured and ranked. A cross-time analysis can present how the leniency levels of EU countries (and the overall EU) have changed and whether other patterns or tendencies exist. The differences in bankruptcy statistics, entrepreneurial activities, labour supply, and credit market conditions can be analysed and explained (cross-country and cross-time, based on the leniency index level changes and differences). On the other hand, the main drivers causing differences among countries are still not obvious[9]. The legislation age and leniency show strong associations, but further analysis is required to find more explanatory factors.

[9] Equally the regulator feels the need for further research in this area. As the newly adopted, not yet fully implemented EU directive on a new start only has entrepreneurial activity within its binding scope, and only – if clearly – it encourages national governments to extend the framework also to consumers, it also contains a call for further research to look into this area, namely, to assess if a harmonisation of EU legislation in the area is called for. Recital no. 98 of EU Directive 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt.

The author’s publications on the given topic

Walter, G and Krenchel, J. V. (2021): The Leniency of Personal Bankruptcy Regulations in the EU Countries, Risks 9: 162, pp. 1-20, https://doi.org/10.3390/risks9090162